



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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Date: January 6, 2011
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Contact Person:
Identification Number:
Contact Number:
FAX Number:
Employer Identification Number:

LEGEND:

Trust =
Company =
Product =
City =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
xx =
yy =
zz =
OO =
PP =

Dear

This is in response to your letter dated June 22, 2010, requesting an extension for an additional five years under section 4943(c)(7) of the Internal Revenue Code (the Code) for disposing of certain excess business holdings.

FACTS:

You are a private foundation organized as a nonprofit corporation on Date 1. You have been recognized as an organization exempt under section 501(c)(3) of the Code and are classified as a private foundation within the meaning of section 509(a). On Date 2, Trust donated xx shares

of Company to you. These shares represent a 100 percent interest in Company, which operates a Product in the City area. Your founder ran the Company for yy years as a “one-person” company. As a result of the Trust’s contribution, you represent that your ownership interest in Company constitutes excess business holdings under section 4943(c)(1). Your initial five-year period for disposing of excess business holdings ends on Date 3.

Due to the nature of the Product, during the initial five-year period for disposing of excess business holdings under section 4943(c)(6) of the Code, you have been engaged in several plans to dispose of your Company shares since Date 2. You reorganized the Company (and Product) to enhance its sale value, and you entered lengthy and sustained discussions and negotiations with various companies, investor groups, and individual investors interested in purchasing the Company or Product. Having received no purchase offers, other than one at a price less than zz percent of the appraised value of the Company, you consulted with legal counsel to explore other avenues for divesting the shares of Company, including contributing the shares to other charitable organizations. You believe you have been unable to sell the shares due to the deterioration in the Product business, the size and unique nature of the Product, and volatility in the financial markets. Due to economic conditions, the value of Company declined from OO to PP between Date 4 and Date 5. You believe that a sale of the company at below-market value will have significant negative consequences on your grant-making ability.

Your plan to dispose of your shares in Company includes continuing your active pursuit of an investor to purchase the Company or Product, at a price that will reflect the inherent market value and waiting for improvement in Company’s value and revenues. While you believe it is most effective to sell all shares of the Company as a unit, your board will consider other approaches. If no sale occurs within 36 months, you will begin using a broker or investment banker or donate the holdings to a public charity. You believe that you can reasonably expect to divest yourself of these shares within an additional five-year period.

You submitted your plan to your state attorney general and are waiting for a response. If and when a response is received from the attorney general, you will submit a copy to the Internal Revenue Service in accordance with section 4943(c)(7)(B)(ii) of the Code.

Before the end of the initial five-year period for disposing of excess business holdings under section 4943(c)(6) of the Code, you submitted a request to the Internal Revenue Service (the Service) for an extension of five years to complete the required disposition.

RULING REQUESTED:

You requested a ruling extending the five-year period of time for disposing of excess business holdings for an additional five years under section 4943(c)(7) of the Code.

LAW:

Section 4943(a)(1) of the Code imposes excise taxes on the excess business holdings of any private foundation in a business enterprise.

Section 4943(c)(1) of the Code provides that the term “excess business holdings” means, with respect to the holdings of any private foundation in any business enterprise, the amount of stock or other interest in the enterprise which the foundation would have to dispose of to a person other than a disqualified person in order for the remaining holdings of the foundation in such enterprise to be permitted holdings.

Section 4943(c)(2) of the Code provides, in part, that the permitted holdings of any private foundation in an incorporated business enterprise are 20 percent of the voting stock, reduced by the percentage of the voting stock owned by all disqualified persons.

Section 4943(c)(6)(A) of the Code provides that, if there is a change in the holdings in a business enterprise (other than by purchase by the private foundation or by a disqualified person) which causes the private foundation to have excess business holdings in such enterprise, the interest of the foundation in such enterprise (immediately after such change) shall (while held by the foundation) be treated as held by a disqualified person (rather than by the foundation) during the 5-year period beginning on the date of such change in holdings.

Section 4943(c)(7) of the Code provides that the Internal Revenue Service may extend for an additional five years the initial five-year period for disposing of excess business holdings in the case of an unusually large gift or bequest of diverse business holdings or holdings with complex corporate structures if:

(A) The foundation establishes that: (i) it made diligent efforts to dispose of such holdings during the initial five-year period, and (ii) disposition within the initial five-year period has not been possible (except at a price substantially below fair market value) by reason of such size and complexity or diversity of holdings;

(B) Before the close of the initial five-year period: (i) the private foundation submits to the Internal Revenue Service a plan for disposing of all of the excess business holdings involved in the extension, and (ii) the private foundation submits the plan to the attorney general (or other appropriate state official) having administrative or supervisory authority or responsibility with respect to the foundation's disposition of the excess business holdings involved and submits to the Internal Revenue Service any response the private foundation received during the five-year period; and

(C) The Internal Revenue Service determines that such plan can reasonably be expected to be carried out before the close of the extension period.

ANALYSIS:

You have stipulated that you are subject to section 4943 of the Code, which imposes a tax on the excess business holdings of private foundations. Generally, under section 4943(c)(2)(A), a private foundation is permitted to hold 20 percent of the voting stock in a business enterprise, with any excess constituting excess business holdings. However, if a private foundation acquires holdings in a business enterprise other than by purchase (e.g., by gift) and this acquisition causes the foundation to have excess business holdings, the interest of the foundation in the business enterprise will be treated as held by a disqualified person (rather than

by the foundation) for a five-period beginning on the date the foundation acquired the holdings, under section 4943(c)(6)(A).

Under section 4943(c)(7) of the Code, the Service may extend the initial five-year period for disposing of excess business holdings for an additional five years if: (1) you establish that you made diligent efforts to dispose of the holdings during the initial five-year period; (2) you establish that disposition within the initial five-year period has not been possible (except at a price substantially below fair market value) by reason of such size and complexity or diversity of the holdings; (3) you submit to the Service and appropriate state official a plan for disposing of the excess business holdings, before the close of the initial five-year period; and (4) the Service determines that the plan can reasonably be expected to be carried out before the close of the five-year extension period.

You received a donation of 100 percent of the shares of Company from your Founder. You have stated that because you own more than 20 percent of the holdings of Company, the holdings constitute excess business holdings under section 4943(c)(1). Therefore, you are required under section 4943(c)(6) to dispose of these holdings during the five-year period ending on Date 3.

During that initial five-year period, you made diligent efforts to dispose of the Company holdings, as required by section 4943(c)(7)(A)(i) of the Code. You reorganized the Company (and Product) to enhance its sale value, entered lengthy and sustained discussions and negotiations with potential investors, and consulted with legal counsel to explore other avenues for divesting the shares, including contributing them to other charitable organizations. However, due to the deterioration in the Product business, the size and unique nature of the Product, and volatility in the financial markets, you have been unable to dispose of the holdings. You represent that the only purchase offer you received was at a price less than zz percent of the appraised value of the Company.

Before the end of the initial five-year period under section 4943(c)(6) of the Code, you submitted a request to the Service under section 4943(c)(7) for an additional five years within which to dispose of your Company holdings and you described your plan for disposing of the holdings. You also submitted your plan to the attorney general of your state.

Thus, based on the information submitted, we have determined that your plan to dispose of all of your Company holdings within an additional five-year period can reasonably be expected to be carried out. Therefore, we conclude that you meet the requirements under section 4943(c)(7) of the Code for an extension of five years to dispose of your Company holdings.

RULING:

Based on the information submitted, we rule that the period during which you must dispose of your excess business holdings in Company to avoid the imposition of the excise tax under section 4943(a)(1) of the Code is extended an additional five years under section 4943(c)(7), until Date 6.

As you have stipulated that you are subject to section 4943 of the Code, we are not ruling on

whether your interest in the Company constitutes "excess business holdings" under section 4943(c)(1) of the Code.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Ronald Shoemaker
Manager, Exempt Organizations
Technical Group 2

Enclosure

Notice 437